Where the property is not money *Wilder v. Wilder and Charters*[4] shews that no order can be made under this rule unless the property can be shewn to be in the possession of the defendant. I can see no reason why there should be an exception where the property is money. It seems to me that unless it is insisted upon that, before an order is made under this rule, the money must be shewn to be actually in the defendant's hands, such orders may well become oppressive, having regard to the consequences which must ensue if the defendant fails to obey the order.

Those being the principles which I think should be applied in making an order under this rule there remains to be considered whether there is anything in this particular case which would justify an exception being made. The plaintiff claims to be entitled to a two-thirds share in the estate of her father who died intestate in 1924. Letters of administration were granted to the defendant, whose case is that the administration of the estate has been completed and that the plaintiff's share was handed over to herself and her husband according to the law and custom of the Chettiar Caste at the time of her marriage in 1927. Whether that was in fact done, and if it was done whether it was done in accordance with the law which was applicable, are among the issues to be determined. Fifteen years later (in 1942) an agreement was entered into between the defendant and the plaintiff's mother. It is stated in this Agreement that "properties of movable and immovable nature" were due to the defendant from the intestate's business, and under the terms of that Agreement the sum of Rs. 26,500 was paid to the defendant. The defendant admits that this money was the proceeds of sale of certain immovable property which was part of the estate. He received this money, but he denies that he has it now. Thus, although he alleges that in 1927 (on the occasion of the plaintiff's marriage) he paid her share to the plaintiff and her husband, we find that fifteen years later he is receiving a substantial sum of money, which is part of the proceeds of the estate, in pursuance of an Agreement to which the plaintiff was not a party. On the face of it it would appear to be in the interests of justice that the Order which is now appealed from should stand. But no application has been made for judgment to be entered under Order 25 rule 2 upon the ground that the defence is frivolous or vexatious; and I do not consider that we are entitled to judge from appearances upon an interlocutory application under this rule. Furthermore, the expressed purpose of this rule is the "detention" and "preservation" of the property. Unless the defendant has the money, it cannot be "detained" or "preserved." There is nothing to shew that the defendant has the money, and I cannot think that we should be justified in assuming that he has it. And to make use of this rule in order to require a defendant to pay money into Court, with no admission from him (or evidence of any kind) that he has the money, seems to me to extend the principle upon which a defendant is required to pay money into Court at this stage of an action beyond the limit which has hitherto been accepted.

I therefore think that this appeal should be allowed with costs.

Appeal Allowed.

REX v. TAN TEE.

[App. Crim. Juris. (Murray-Aynsley, C.J.) April 21, 1948]
[Singapore — Misc. Appl. No. 4 of 1948]

Criminal Procedure — Bail pending appeal from Magistrate's decision — Practice.

This was an application to High Court on behalf of the accused who was charged that he on or about 4/3/48 at 12.55 p.m. at No. 472 Victoria Street, did dishonestly retain stolen property, to wit, 3 pistons valued at $600/- the property of Gammons Malaya Ltd., knowing or having reason to believe the same to be stolen property, and thereby committed an offence punishable under s. 411 of the Penal Code. The accused was convicted by the 5th District Judge and sentenced to 12 months rigorous imprisonment. The learned District Judge refused bail pending the hearing of the appeal. The wife of the accused applied to the High Court for an order that the accused be admitted to bail pending the hearing and determination of his appeal.

Held, that it has always been the practice in this country for Magistrates to allow bail to a convicted person unless the Magistrate has very good reasons for not allowing it.

Case referred to :—

(1) *R. v. Greenberg,* 17 Cr. App. R. 106.

APPLICATION FOR BAIL.

Po Guan Hock for the Applicant.

L. Rayner for the Crown in opposing the application said that in English practice, the Court of Criminal Appeal never allowed bail unless in very special circumstances and referred to the case of R. v. **Greenberg**[1].

The Application was heard before **Murray-Aynsley, C. J.,** in Chambers who in giving oral judgment said that this was not an appeal to Court of Criminal Appeal but it was an appeal from the Police Court and that it has always been the practice in this country for Magistrates to allow bail to a convicted person unless the Magistrate has reasons for not allowing it. The usual reason for not allowing bail is the

expectation that the appellant will abscond. Accordingly His Lordship allowed bail at $2,000/- in two sureties of $1,000/- each.

Application Allowed.

SEE YEOW CHENG v. TEO GUAN CHIANG.

[Orig. Civ. Juris. (Thorogood, J.) February 16, 1948]
[Singapore — Civil Suit No. 258 of 1947]

Partnership — Evidence of Partnership — Account — Whether accounts can be ordered where dissolution of partnership is not prayed.

In this case two issues were raised, viz. :—

(1) Was defendant, Teo Guan Chiang, a partner in the firm known as the "Overseas Laundry"?

(2) If the finding in the above is in the affirmative, is the plaintiff entitled to have an account taken as claimed?

As regards the first issue there was evidence by the plaintiff that on the withdrawal from the firm of Chan Weng Seng on the 30th September, 1946, the remaining partners, viz. the plaintiff and the defendant 'agreed to carry on'. An Account Book produced by the defendant and said by him to be the only book containing the accounts of the abovenamed firm corroborates that direct oral evidence. There was no evidence from the defendant.

Held, that defendant was a partner in the firm.

As regards the second issue, it was agreed that the plaintiff has had inspection over a period of six days of the Accounts produced. It was submitted for the defence that (a) inspection is all to which plaintiff is entitled, (b) no averment was made in the statement of claim and no cause has been shown why an order for accounts should be made, and (c) no sufficient reason is disclosed for departing from the old rule that a decree for an account between partners will not be made except when dissolution for partnership is prayed.

Held, that the in view of all the circumstances of this case the plaintiff has established his right to an account although dissolution of the partnership was not prayed.

PARTNERSHIP ACTION.

Sandy G. Pillay for the Plaintiff.

D. S. Marshall for the Defendant.

Thorogood, J. : — In this matter two issues were raised, viz :—

(1) Was defendant, Teo Guan Chiang, a partner in the firm known as the 'Overseas Laundry' ?

(2) If the finding on the above is in the affirmative, is the plaintiff entitled to have an account taken as claimed?

As regards the first issue, there was evidence by the plaintiff that on the withdrawal from the firm of Chan Weng Seng on the 30th September, 1946, the remaining partners, viz the plaintiff and the defendant 'agreed to carry on'. An Account Book produced by the defendant and said by him to be the only book containing the accounts of the above named firm corroborates that direct oral evidence. There was no evidence from the defendant. I find therefore that defendant was a partner in the firm.

As regards the second issue, it is agreed that the plaintiff has had inspection over a period of six days of the Accounts produced. It is submitted for the defence that (a) Inspection is all to which plaintiff is entitled, (b) no averment was made in the statement of claim and no cause has been shown why an order for accounts should be made, and (c) no sufficient reason is disclosed for departing from the old rule that a decree for an account between partners will not be made except when dissolution of the partnership is prayed.

It is admitted that defendant is still carrying on the business of a laundry. It is submitted for the defendant however that this present laundry business is under a different name and with other contracts but there is no evidence from the defence on that point. Plaintiff states on oath that the present business belongs to the partnership and that he is being excluded from the benefits of that business and further that the accounts of which he has been given inspection and which were produced at the hearing are incomplete. He does not ask for dissolution of the partnership but submits that there is every reason for relaxation of the rule cited by the defence.

Reference to the Account Book produced shows that the capital of the firm was $2,400 and that there were two partners up to the end of May, 1947, as alleged by the plaintiff, and that both plaintiff and defendant received salary up to and including that month. From June, 1947, onwards there is no mention of partners or reference to the capital but it appears that the profits continued to be divided by six. Prior to that month the two partners and four workmen were shown to have taken one sixth of the profits each. The only reference to plaintiff in the Account Book after May is in respect of money said to be 'mislaid and paid to Mr. See' in June. I presume that this Mr. See is the plaintiff. For some reason not disclosed, however, a new item appears in the Accounts for July and August in respect of cash carried forward and 'reserved for next month'. At the end of August the accounts which had been getting less and less detailed for some months finally ceased except for an item carried forward to the 1st September, 1947, which item apparently bears no relation to any item in the accounts for the previous